



February 4, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-0407

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131872.

The Texas Department of Insurance (the "department") received a request for any and all documents of NYLCARE including but not limited to annual reports, financial statements, contracts, quality assurance programs and other named documents. You assert that some of the requested information will be provided to the requestor. You claim that information pertaining to NYLCARE'S quality assurance program is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 20A.17(b)(4) of the Insurance Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information deemed confidential by law, including information deemed confidential by statute. Article 20A.17(b)(4) provides the following:

The commissioner may examine and use the records of a health maintenance organization, including records of a quality of care assurance program and records of a medical peer review committee . . . as necessary to carry out the purposes of this Act, including an enforcement action under Section 20 of this Act.

That information is confidential and privileged and is not subject to the open records law, Chapter 552, Government Code, or to subpoena except as necessary for the commissioner to enforce this Act.

Ins. Code art. 20A.17(b)(4). The submitted information contains records of NYLCARE, a health maintenance organization, and documents from the department pertaining to NYLCARE. Because article 20A.17(b)(4) only applies to records of a health maintenance organization, we conclude that article 20A.17(b)(4) does not make the department's documents confidential. Therefore, you must withhold the records of NYLCARE, including records of a quality of care assurance program, under section 552.101 in conjunction with article 20A.17(b)(4). However, you must release the department's submitted documents.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

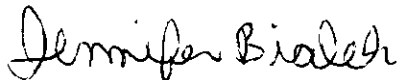
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 131872

Encl. Submitted documents

cc: Ms. Susan Brown
Davis & Shank
1415 Louisiana, Suite 4200
Houston, Texas 77002
(w/o enclosures)